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John F. Carter  
Federal Deposit Insurance Corporation  
25 Jessie Street at Ecker Square, Suite 2300  
San Francisco, CA 94105-2780

August 23, 2005

Dear Mr. Carter:

We the undersigned are writing to offer comment on the Industrial Bank Application Package (Application) of Wal-Mart Stores, Inc. (Wal-Mart) seeking a charter and deposit insurance protection for its proposed Wal-Mart Bank (Bank). We oppose Wal-Mart's application and ask that the FDIC schedule public hearings for the purpose of reviewing Wal-Mart's application as well as Wal-Mart's track record in areas relevant to the issues at-hand for review.

In particular, we oppose Wal-Mart's errant claim that the proposed Wal-Mart Bank would be exempt from the Community Reinvestment Act (CRA) requirements described in 12 CFR Part 345. We base our opposition on the following factors:

**1. Wal-Mart Bank as Proposed Fails to Meet the Definition of a Special Purpose Bank**

Wal-Mart asserts that it is establishing a "special purpose bank" exempt from CRA responsibilities pursuant to 12 CFR § 345.11(c)(3), because its "proposed activities are limited and do not include granting of credit to the general public." (Application, Letter from Jerold G. Oldroyd to FDIC)

However, the same regulation further states that such exempt banks include "banker's banks...and banks that engage *only* in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents" (emphasis added). The proposed Wal-Mart Bank's activities clearly transcend these limited functions, and none of these terms (nor any combination thereof) encompass the scope of the activities proposed to be undertaken by the Wal-Mart Bank. This is precisely why Wal-Mart does not claim that Wal-Mart Bank qualifies for exemption from CRA responsibilities as any of these specific types of special purpose banks. And although the FDIC has indicated that this list of special purposes is not exclusive, it is clear that designation as a special purpose bank is not intended to be an option for any institution that deviates from the traditional notion of an FDIC-protected bank.

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In its application, Wal-Mart makes it clear that the proposed bank will engage in activities similar to those performed by non-exempt financial institutions, despite the fact that it is not extending credit to the general public. In addition to depository, presentment and processing functions that alone would result in its ineligibility to be deemed a special purpose bank the Wal-Mart Bank proposes to issue certificates of deposit, not only to tax-exempt organizations but also to individual investors. Although it may be true that Wal-Mart Bank's proposed services render the lending test irrelevant, certainly there are numerous means by which Wal-Mart could and should meet CRA standards pertaining to investment and service.

Should the FDIC ultimately approve a special purpose CRA exemption for the Wal-Mart Bank despite these concerns, the approval order must include a requirement that, in the event that the bank begins making loans or otherwise deviates from its submitted business plan, the Bank must submit a revised plan. This plan must be evaluated *de novo* by the FDIC, and this evaluation must include an opportunity for public review and comment.

## **2. The Proposed Wal-Mart Bank Could Reduce Community Reinvestment in Local Communities**

Not only are many of the proposed activities of the Wal-Mart Bank beyond the scope of those which qualify an institution for a special purpose exemption, they are also functions currently performed by banks that are required to fulfill CRA responsibilities. By removing financial assets from banks which have CRA obligations and placing them into a special purpose bank that is exempt from the CRA, Wal-Mart's entry into banking would likely result in a direct and widespread reduction in community reinvestment activity in local jurisdictions throughout the United States. Wal-Mart has made it clear that it has no intention of compensating for that reduction. Therefore, if Wal-Mart Bank is successful in its efforts to carve out selected core banking services and provide them in lieu of these existing financial institutions, it should certainly not be exempted from its obligations under the CRA. At the very least, the Wal-Mart Bank should only be exempted from those activities in 12 CFR 345 that are impossible for it to perform due to its limited scope. The FDIC should then regularly examine Wal-Mart Bank's CRA performance using all applicable tests and standards.

Additionally, because of the impact an approved Wal-Mart Bank's operations would have on communities throughout the country (as discussed separately in these comments), any approved CRA assessment area would necessarily include major portions of the U.S., if not the nation in its

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entirety. The FDIC must reject any assertion by Wal-Mart that its assessment area is limited to the Salt Lake City area.

### **3. Wal-Mart, the Proposed Bank's Parent, Destabilizes Local Communities and Economies**

Numerous studies have documented the deleterious impact the opening of a Wal-Mart store has on local communities. A 1995 Iowa study showed that since Wal-Mart's entry into the state in 1983, 50% of clothing stores, 30% of hardware stores, 42% of variety stores, 26% of department stores, and 25% of building materials stores had closed. A 2004 University of Illinois-Chicago study found that the opening of a Wal-Mart store in the Chicago area would result in an actual net loss of jobs and income for the community. When Wal-Mart opens on the outskirts of town, Main Street closes, as local small businesses are unable to compete with Wal-Mart's pricing power, which many studies have shown to be predatory in practice.

Local businesses by and large use local banks as their depositories and for other financial activity. Most regulated banks recycle a large portion of the deposits they get back into the local community from which they came through loans and investments. A Wal-Mart store, on the other hand, does not deposit its receipts into a local bank for reinvestment back to the local community. Nor does it use local banks for loans or other banking services. Instead, it transfers its daily receipts back to corporate headquarters, which then invests the funds in a plethora of global financial instruments.

It should also be noted that Wal-Mart has a record of shirking its responsibilities as a corporate citizen. For any given Wal-Mart SuperCenter, the amount of annual taxpayer subsidies exceed the total of all property taxes paid, occupational license fees rendered and charitable contributions made. (This does not even factor in the more direct subsidies received by the company in forms such as tax credits or reduced-price land.) Wal-Mart in effect requires that taxpayers subsidize its operation. In particular, according to reports filed with the Department of Labor, only 47% of Wal-Mart employees are covered by the company's health care plan. An unspecified but significantly lower percentage of worker's family members have coverage, driving up the rate of participation in publicly financed health care programs. Wal-Mart has had the highest number of employees and family members (in both absolute and relative terms) dependent on Medicaid and Children's Health Insurance Program in all but one of the states in which such data has been released. WARN estimates that taxpayers will be required to pay more than \$150 million in such costs in one state alone (Florida) over the next five years. On the other hand, a typical Wal-Mart worker who is offered and accepts full family

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coverage could reasonably end up spending more in premiums, deductibles and coinsurance than he or she takes home.

This exemplifies Wal-Mart's practice of taking more out than it puts back in. The fact is, Wal-Mart drains resources from the very communities the CRA was enacted to bolster. It is therefore essential to the financial health of local communities that the FDIC require, as a condition of approval of the Wal-Mart Bank's charter, that the Bank meaningfully serve the local credit and financial service needs of any community from which it proposes to siphon store revenues.

#### **4. The Proposed Bank's Parent Company Exhibits Extensive Pattern and Practice of Disregarding the Law.**

Wal-Mart is a company that has a long record of failing to abide by the law. Wal-Mart is currently implicated in the largest class action lawsuit relating to employment discrimination in U.S. history, consisting of 1.6 million current and former female Wal-mart employees (*Dukes v. Wal-Mart.*) In June, 2004, a federal judge dealt Wal-Mart a severe legal setback when she certified the class and ruled that the lawsuit alleging gender bias could proceed.

Wal-Mart also faces several class-action lawsuits alleging racial bias, for both employment discrimination and for racial profiling of customers.

Wal-Mart has been cited for, has settled, or faces current allegations of several other illegal acts and improprieties. These include, but are not limited to: locking immigrant workers in a store, violating child labor laws, improperly recording employee hours, carrying out mass unanticipated firings, and most recently, issuing worker schedules directly from the company's Bentonville headquarters. The latter practice will result in the reduction of hours and loss of benefits for many single parent or low-income workers in underserved communities who rely on a modicum of flexibility in scheduling to ensure the well-being of their families.

Wal-Mart appears to be engaged in a pattern and practice of disregarding the law. The allegations of gender and racial bias are particularly troublesome, as the federal courts have already determined that they are not without substance and merit. We ask that the FDIC delay any consideration of Wal-Mart's application to

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charter and insure the Wal-Mart Bank until it has conducted a complete and thorough examination of these legal proceedings. The FDIC must be convinced that adequate procedures have been put in place by the applicant to ensure that the kind of discriminatory practices alleged in the applicant's other business lines will not be carried over to or adopted by its proposed financial institution.

**5. Wal-Mart's Pledge to Reach Underserved Communities is a "Red Herring"**

Wal-Mart states that its special purpose bank will provide community financial education to residents of the Salt Lake City and "anticipates" doing so in other unspecified communities (Application, p.9). The fact that the Wal-Mart Bank proposes to provide community financial education is unrelated to the question of whether it must fulfill responsibilities under the CRA. Wal-Mart would not mention these activities if it were not attempting to convince the FDIC that, if it were to release Wal-Mart Bank from its obligations under CRA, it would nevertheless serve the communities it would have been required to serve in the first place...but on its own terms. In other words, Wal-Mart says that it will do more than it is required to do, if the FDIC will grant it an exemption to which it is not entitled in the first place.

Wal-Mart's pledge to provide financial education must be considered entirely immaterial to the determination of whether the Wal-Mart Bank is a special purpose bank exempt from CRA-related responsibilities. Such voluntary commitments can neither diminish nor substitute for the legally mandated responsibilities of the Community Reinvestment Act. Furthermore, even if such "off the books" commitments were theoretically appropriate or beneficial to the community, there is no way for the public to fully evaluate or comment on the merits of these proposed "community involvement" activities. This is the case because Wal-Mart has hidden all programmatic detail and description of the proposed activities from public scrutiny, by including them in the portion of the application that it deems to be confidential.

**6. Wal-Mart's Application Requires Particular Scrutiny Because of Its Corporate Stature**

The FDIC should also note that Wal-Mart is no ordinary corporation. Even though "the Bank will be the exclusive provider for the payment transactions initiated by Wal-Mart...and will not offer similar services to other retailers" (Application, p.2), Wal-Mart is "the largest retailer in the world, in terms of total revenues" (Application, p.8). In fact, Wal-Mart's sales totaled \$268 billion last year, according to the company's annual report. Presumably, the vast majority of these transactions were paid by check, debit card or credit card. The magnitude of the business to be conducted via Wal-Mart Bank on behalf of Wal-Mart is immense, and will

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impact communities across the nation. Moreover, Wal-Mart's sales have continuously increased each year, and so the impact will only increase over time.

We believe that the concerns associated with the commingling of banking and separate commerce activities as proposed by Wal-Mart are well known to the FDIC, but they warrant explicit attention in this context. In the application, there is not even a semblance of the necessary "arm's length" relationship between these two sectors of Wal-Mart's operations. In addition to the obvious concerns about propriety raised by such a lack of separation, the FDIC should also be concerned that such opportunities for Wal-Mart to market any of the services to be provided by the Wal-Mart Bank would inappropriately undermine competition in the banking industry.

#### **7. Wal-Mart Excessively Shields Its Plans From Public View**

Wal-Mart claims that the specific nature of its proposed activities need not be fully evaluated by members of the public. Wal-Mart claims that such public disclosure could cause substantial harm to Wal-Mart and Wal-Mart Bank by "providing competitors with significant financial and operational information" about the parent company and the individuals involved (Oldroyd Letter). Yet Wal-Mart does not "foresee [the Bank] competing with existing institutions in the [Salt Lake City] MSA for customers or product lines" (Application, p.8). Nor does it intend to displace any existing sponsorships with "money center banks that perform payment processing functions" for other retailers in the national marketplace. The Wal-Mart Bank has therefore already identified and secured its one targeted customer, so it is not clear who these competitors from whom Wal-Mart is attempting to conceal trade secrets are.

Wal-Mart clearly oversteps by attempting to have two volumes of information submitted to the FDIC deemed confidential, citing 12 CFR §§ 303.8(b)(i) and (b)(ii). Again, Wal-Mart reads portions of the regulation selectively: "The applicant may request that *specific* information be treated as confidential" (emphasis added). Two full volumes of information (out of three submitted) cannot reasonably be considered "specific information." The FDIC should redact the specific information from the Wal-Mart Bank application deemed confidential and release the balance for public inspection, as well as schedule public hearings on the proposed Wal-Mart Bank.

In closing, we ask that the FDIC note that the memberships of the organizations submitting these comments include very significant numbers of low- and moderate-income families, many of whom are African-American, Latino, or other racial minorities. Our members live in communities throughout the United States and are greatly concerned about the impact, both direct and indirect, that a new financial institution owned by the world's largest corporation would have on their neighborhoods were it exempted from the reinvestment obligations mandated by the Community Reinvestment Act. Many of our members are also current or former Wal-Mart employees who have witnessed firsthand the company's patent disregard for our nation's employment and discrimination laws.

The expansion of the world's largest retailer into a federally insured and regulated financial institution will have enormous impacts, again both direct and indirect, on all Americans. On behalf of our members and working people throughout the U.S., we respectfully request that the FDIC schedule a series of no less than 8 public hearings on the proposed Wal-Mart Bank application. We request that these meetings be held in each region of the country and that they be scheduled at night to facilitate maximum participation by the working public.

It is critical that the decision-makers at the FDIC provide Americans with every opportunity possible to comment on this critically important application. For many Americans, submitting written comments is a difficult and foreign way of communicating. Many simply don't have the time to effectively compose and submit written comments. For others, oral communication is their preferred method of conveying information. A public hearing in which interested parties can provide oral testimony is by far the most appropriate and convenient forum for many Americans to use to express their opinions and offer their expertise.

Thank you in advance for your consideration of these comments.

Sincerely,

Alton Bennett  
Association of Community Organizations  
for Reform Now (ACORN)

Rick Smith  
Florida Project Director, WARN  
Wal-Mart Alliance for Reform Now

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